

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of the California Public Utilities)	CC Docket No. 99-200
Commission for Delegated Authority to)	
Implement Specialized Transitional Overlays)	

PETITION FOR RECONSIDERATION OF PAC-WEST TELECOMM, INC.

Pac-West Telecomm, Inc. ("Pac-West"), pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, hereby petitions for reconsideration of the Commission's decision delegating authority to the California Public Utilities Commission ("CPUC") to implement specialized numbering overlays in the above-referenced proceeding.¹ The *Order* grants in part a Petition filed by the CPUC² requesting authority to implement service-specific and technology-specific overlays, referred to collectively as "specialized overlays" ("SOs"). The *Order* allows the CPUC to depart from standard practice of distributing telephone numbers on a geographic basis, and instead distribute telephone numbers based on the type of service provided or the type of technology used to provide the service. It permits the CPUC to implement two SOs: one SO to cover the northern portion of the state (covering 530, 707, 415, 510, 925, 650, 408, 831, 209 and 916 area codes) and one to cover the southern portion of the state (covering 760, 559, 661, 805, 619, 858, 818, 213, 310, 323, 562, 626, 714, 949 and 909 area codes). According to the *CPUC Petition*, that agency intends to use the SOs for segregating "non-geographic based" services and technologies including: OnStar, paging services, Voice over Internet Protocol ("VOIP") services,

¹ *Petition of the California Public Utilities Commission for Delegated Authority to Implement Specialized Transitional Overlays*, Order, CC Docket 99-200, FCC 05-2439 (rel. Sept. 9, 2005) ("*Order*").

² *Numbering Resource Optimization, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Petition of the California Public Utilities Commission and the People of the State of California for Authority to Implement Specialized Overlay Area Codes, CC Docket Nos. 99-200 & CC Docket No. 96-98 (filed Oct. 6, 2003) ("*CPUC Petition*").

vehicle response systems (*i.e.*, telematics), E-Fax, automated teller machines, point-of-sale machines, multi-line fax machines, and ISP dialup lines.³

The Commission should reconsider its decision because enabling the CPUC to differentiate, and thus discriminate, between services and technologies is contrary to the public interest and to Commission policy. The services targeted by the CPUC will be forced to assign numbers from new, non-geographically based area codes. Treating new services differently from cellular and traditional wireline services is inherently discriminatory. The numbering overlays contravene the Commission's number portability policy, because customers most likely will not be permitted to port existing "geographic" telephone numbers to services that the CPUC has relegated to the overlay area codes. Further, the overlay policy will be impossible to implement according to its terms—carriers do not know, and customers do not routinely identify, whether a particular access line is being used for one of the special purposes (such as point-of-sale credit-card machines or automatic teller machines) that the CPUC seeks to segregate. They will also make it impossible for carriers in California to rate calls correctly, an issue that was not adequately addressed by the CPUC in its *Petition*.⁴ Finally, Pac-West respectfully submits that the *Order* fails to adhere to FCC-derived criteria for the implementation of SOs.

Pac-West recognizes the CPUC's concern to preserve numbering resources and to ensure the efficient assignment and use of telephone numbers. Pac-West does not oppose non-discriminatory area code relief efforts like all-services overlays. However, the SOs proposed by the CPUC raise a great many implementation issues that need to be addressed prior to the Commission granting the authority requested by the CPUC.

³ See *CPUC Petition*, at 2-3.

⁴ See *CPUC Petition*, at 4.

I. Technology and Service-Specific Overlays Are Inherently Discriminatory

The Commission's numbering policy has long been based on the principle that numbering resources should be made available on an equitable and fair manner across industry segments. Its rules expressly state that particular services, technologies, and market segments should not be favored over others in the provision of numbering resources.⁵ By allowing the CPUC to dictate which technologies it believes should be included in the new overlay area codes, the *Order* violates this policy and allows the CPUC to discriminate against particular services, technologies and market segments in the provision of numbering resources. Allowing the CPUC to differentiate between different types of voice and data services for the provision of numbering resources is inherently discriminatory.

The Commission has previously rejected a service-specific overlay plan as unduly discriminatory to a particular market segment. In the *Ameritech Order*,⁶ the Commission considered a proposal by Ameritech to implement a wireless service-only overlay plan. In rejecting the request, the FCC found it discriminatory that number assignments would continue in the original area code for wireline carriers only, but paging and cellular carriers would be excluded from such assignments.⁷ The CPUC's SO plan discriminates in the same way. It will place providers of those enumerated technologies and services at a distinct competitive disadvantage, forcing their customers to use non-geographically based numbers when, on the contrary, many of these customers desire otherwise. Customers of VoIP providers, for example, would be required to use

⁵ See generally 47 C.F.R. § 52.9 (noting that numbering administrators shall not unduly favor or disfavor any particular "industry segment" or "technology.").

⁶ See generally Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech – Illinois, Declaratory Ruling and Order, IAD File No. 94-102, (rel. Jan. 23, 1995) ("*Ameritech Order*").

⁷ *Id.*, ¶¶ 25-29.

non-geographically based telephone numbers for their residential voice services.⁸ Likewise, businesses choosing to switch to VoIP services apparently would be unable to port their existing telephone numbers to VoIP service providers and instead would be forced to incur the cost and inconvenience of using telephone numbers from the SOs. This would require customers to change their telephone numbers on their business cards, stationery and directory listings—a burden many locally-based businesses will refuse to undertake.

The *CPUC Petition* does not refer to any potential loss of business that VoIP and other similarly situated providers may suffer from an inability to retain their customers' existing numbers, nor does it mention the marketing-related costs that business would be forced to incur to try to retain customers affected by the SOs. The *CPUC Petition* does not provide any data as to how area code exhaust would be forestalled if the SOs are implemented. As such, it is impossible for the Commission to “weigh the costs of allowing state commissions to implement SOs against the benefits to be realized.”⁹ Since the CPUC petition is completely devoid of any discussion of these issues, and there is no attempt to quantify the costs associated with the SOs, Pac-West respectfully submits that the Commission should reconsider the *Order*.

⁸ The *Order* clearly allows the CPUC to subject VoIP and other listed services to disparate treatment in the utilization of geographically-based numbering resources. For example, the *CPUC Petition* does not specifically define VoIP, or specifically identify which, if any, VoIP-related services should be included in the SOs. Presumably, multiple types of VoIP services could be subject to these SOs, including: phone-to-phone VoIP, computer-to-phone VoIP, IP-PBX systems, and other IP-enabled voice communications systems, whether provided by traditional telecommunications retailers, resellers, VoIP providers or other service suppliers.

⁹ See *Numbering Resource Optimization*, Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, CC Docket Nos. 99-200, 96-98 & 95-116 (rel. Dec. 28, 2001) (“*Third NRO Order*”), ¶ 78. See also, *id.*, ¶ 80 (“We also emphasize that SOs are numbering resource optimization measures; thus, states seeking to implement a SO must also demonstrate that the benefits outweigh the costs of implementing the SO.”).

II. Any Attempt To Restrict Any Particular Service To Certain Area Codes Is Bound To Fail

The CPUC Petition plainly admits that businesses currently do not track how numbers are being used by customers.

The industry has ... informed the CPUC staff that they do not currently track the type of services to be included in the SOs. At this time, the industry can neither estimate the current level nor the future demand of numbers used for these services. Carriers assert that they would need to individually survey their customers to determine the extent of usage and identify the individual numbers assigned to specialized overlay type services. Going forward, carriers will need to modify their billing, provisioning and ordering data bases and systems in order to track these services.¹⁰

The CPUC Petition does not quantify, or even estimate, how much “usage tracking” would cost the affected industries. It does not discuss how tracking should occur, how to ensure that customers are honest about their usage, or how to deal with customers who change the use of their telephone numbers without informing the underlying carrier. The CPUC only requests “some leeway” in resolving these incredibly complex and burdensome requirements. Clearly, the CPUC Petition fails to account for today’s telecommunications climate.

Businesses today live in a fast-paced world. For example, how would the SO rules apply to a company that modifies its internal telephony system to a VoIP-based solution, or installs facsimile systems on those numbers? The Order would allow the CPUC to require that these businesses use telephone numbers assigned from the SOs. Further, if that business decided to switch back to its original setup (say, they were unsatisfied with their facsimile or VoIP service), again, that business would be forced to abandon the SO-related numbers and obtain non-SO area code based numbers. This is a recipe for chaos and for inconsistent, arbitrary administration.

¹⁰ CPUC Petition, at 3.

Use of numbering resources in enterprise situations is not currently tracked, and for good reason: telecommunications services used by businesses must remain adaptable. Companies need the ability to add new services, remove existing services, and modify those services without having to worry about SOs and area code usage. Trying to force carriers to track this usage is not realistic. Requiring enterprise users to give up and redeem numbers with different area codes based on the technology used on a particular access line on a particular day will lead to significant disruptions in service. Further, this dropping and adding of numbers will ensure that these numbers will become much less portable, and will clearly slow the re-utilization of previously distributed SO and non-SO numbers.

III. SOs Will Disrupt Call Rating Procedures

As the Commission is aware, calls are rated based on the area code and central office code in telephone numbers. These digits provide carriers the information needed to determine how to rate particular calls for routing and intercarrier compensation purposes. Implementing the CPUC's SOs will necessarily mean that the usage of rate center identifiers will be of no use to carriers for routing and compensation purposes because the SOs would necessarily cover area codes containing overlapping office codes. For example, the northern SO would contain area codes covering San Francisco (415) and Sacramento (916). However, each of these area codes contains up to 800 individual central office codes and dozens, or perhaps even hundreds, of distinct local calling areas. Under this Commission's rules and CPUC-approved tariffs, calls that originate and terminate within the same local calling area are subject to different rates than calls that originate outside the local calling area, but within the same state. Given the sheer magnitude of area codes and central office codes in use in California today that will be covered by these two SOs, it will clearly be impossible for carriers to rely on an SO area code and office code to determine how to route and rate calls.

In addressing this issue, the *CPUC Petition* merely states that “the rate centers for the SOs would match the rate centers for each of the underlying area codes. Matching of the rate centers would avoid rating and routing problems, and associated billing problems that would otherwise arise if rate centers do not match.”¹¹ However, this does not explain how carriers could rate calls where one NXX code is used in an SO to cover perhaps dozens of rate centers with the same code within the northern or southern SO areas. This will mean that the new SOs will have hundreds of rate center codes which will match two or more rate centers associated to the traditional area codes in the state. The CPUC Petition and Order do not adequately explain how the call rating can technically take place where central office codes in the new SO can correspond to dozens of different locations within the respective SO.

IV. The Order Does Not Comply With the FCC’s SO Criteria

In its *Third NRO Order*,¹² the Commission lifted its ban on service and technology specific area code overlays, but outlined the criteria to be used in evaluating requests to implement such overlays. The CPUC has not met, or, in some cases, even addressed those criteria. As such, the *Order* violates the Commission’s own criteria, and should therefore be reconsidered.

The Commission set criteria in the *Third NRO Order* for evaluating requests for delegated authority to implement an SO. Beyond a description as to why the numbering resource optimization benefits of the proposed SO would be superior to implementation of an all-services overlay, the FCC directed petitioners to address, among other items, the costs and benefits associated with the proposed SOs, the areas nearing exhaust where relief is needed, the technologies or services to be included in the SOs, and when the SOs will be implemented.¹³

¹¹ *CPUC Petition*, at 4.

¹² See *Third NRO Order*, ¶¶ 67-94.

¹³ *Third NRO Order*, ¶¶ 80-81.

The CPUC request failed to meet many of these criteria. The *CPUC Petition* failed to quantify any costs or benefits associated with the CPUC's request. Also, the *CPUC Petition* is not "limited to areas in which a state has properly determined that area code relief is needed[.]"¹⁴ but would apply to all areas codes throughout the entire State. There is no justification provided as to why a technology-specific overlay would be more beneficial than a technology-neutral overlay. In fact, *CPUC Petition* failed to establish that there are exigent reasons for engaging in its planned SOs, and does not limit the SOs to services that do not need numbering resources from a particular geographic area, such as numbers services where the actual number is unimportant like telephone numbers assigned for use by automated teller machines.

The *Third NRO Order* makes clear that transitional SOs are preferential when a state commission implements a technology-specific overlay, but, when implementing a service-specific overlay, permanent overlays are preferred.¹⁵ The CPUC has proposed "hybrid" SOs that will be both technology-specific and service-specific. The proposed SOs cannot be transitional in nature as each SO will encompass many other area codes. The CPUC has not explained how numbering resources will not be wasted in the SOs since it is partly technology-specific and therefore has not justified how the proposed SOs serve the public interest especially in light of the Commission's clear policy preference for technology-specific overlays to be transitional.

The Commission has also recognized the competitive implications of segregating new technologies with customers that require geographic-based telephone numbers into overlays. The Commission highlighted such concerns when discussing the use of service-specific overlays: "[The Commission] specifically favor[s] service-specific overlays that would include and retain non-geographic based services as a means to further reduce demand in the underlying area

¹⁴ See *id.*, ¶ 80.

¹⁵ See *id.*, ¶ 84.

code.”¹⁶ Since the CPUC Petition includes geographic-based telephone numbers in the proposed specialized overlays, it is disfavored under Commission precedent.

Further, no rational basis was provided for using technology-specific overlays which necessarily require services and technologies to be treated in a disparate manner. The CPUC did not address the potential to use an all-service, non-discriminatory overlay. The CPUC also did not provide, with specificity, which technologies and services would be subject to the SOs. The CPUC Petition and Order, for example, simply list “VoIP” as a service potentially subject to SO categorization. However, as the Commission has acknowledged, there are multiple forms of VoIP services,¹⁷ many of which would not be appropriately categorized as non-geographically based. Simply stated, most VoIP customers request geographically-based telephone numbers with their service, and as such should not be forced to take a non-geographically based number by the CPUC.

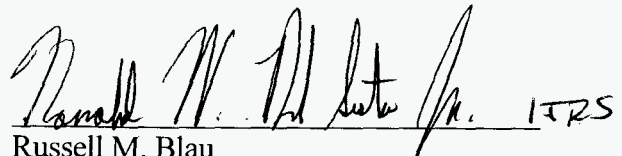
¹⁶ *Id.*, ¶ 82.

¹⁷ For example Pulver.com’s Free World Dialup service is a “computer-to-computer” VoIP service, Vonage provides a computer-to-phone VoIP service, and AT&T provides a phone-to-phone VoIP service. See, e.g., *Petition for Declaratory Ruling that Pulver.com’s Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, Memorandum Opinion and Order, FCC-04-27 (rel. Feb. 19, 2004); *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order (rel. Nov. 12, 2004); *Petition for Declaratory Ruling that AT&T’s Phone-to Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Order, FCC 04-97 (rel. Apr. 21, 2004).

V. Conclusion

For the foregoing reasons, Pac-West respectfully requests that Commission reconsider its *Order* allowing the CPUC to implement technology-specific SOs in that state. As the *Order* now stands, the SOs will be *prima facie* discriminatory, they will be administratively unworkable, and they will disrupt call rating processes. Further, Pac-West respectfully submits that the *Order* fails to consider and adhere to the Commission-derived criteria for implementation of SOs.

Respectfully submitted,



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